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Docket No.: 2038-285

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Toshifumi OTSUBO

U.S. Patent Application No. 10/067,334

Filed: February 7, 2002

:  
:  
: Confirmation No. 4608  
:  
: Group Art Unit: 3761  
:  
: Examiner: Michele Kidwell

For: DISPOSABLE BODY FLUID ABSORBENT WEARING ARTICLE

RESPONSE TO RESTRICTION REQUIREMENTCommissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

By Official Action mailed *February 8, 2005*, restriction to one of the following species of the claimed invention is required:

Species 1: Figure 1

Species 2: Figures 2-7

Species 3: Figure 8

In response, Applicants hereby elect Species 2 (FIGs. 2-7), upon which claims 1-5, 7, 9-15, 17 and 19-21 are readable. Claims 1-5, 7, 9-15, 17 and 19-21 are all generic claims.

The election was made *with traverse* because the Examiner has failed to follow proper USPTO practice and procedure.

Every requirement to restrict has two aspects:

(A) the reasons (as distinguished from the mere statement of conclusion) why the inventions

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as claimed are either independent or distinct; and

(B) the reasons for insisting upon restriction therebetween. *See MPEP*, section 808 (emphasis added).

In this case, the Examiner has met none of the above requirements. The Examiner's Restriction Requirement is therefore improper and should be withdrawn or at least rephrased.

The Restriction Requirement is further traversed because the search and examination of the entire application can be made without serious burden on the Examiner. In particular, in the first Office Action mailed *August 13, 2004*, the Examiner was able to examine all original claims including generic claims 1-5 and 7 readable on elected Species 2, claim 6 readable on Species 3 and claim 8 readable on Species 1. Thus, by the first Office Action, the Examiner has demonstrated that claims directed to all three species can be covered in a single search without serious burden.

The Restriction Requirement is further traversed because it was confusing and inaccurate. In particular, FIG. 1 and FIGs. 2-7 are directed to a single species, rather than two species, i.e., Species 1 and Species 2, as indicated in the Restriction Requirement.

Species are always the specifically different embodiments. *See MPEP*, section 806.04(e), page 400-41, left column, lines 3-4.

As FIGs. 1-7 are various views of a first embodiment of the present invention (*see the specification*, page 4, line 17 through page 5, line 8 of the specification), they belong to the same, elected species and cannot be regarded to include two species, i.e., Species 1 and Species 2, as indicated in the Restriction Requirement. Therefore, claims 8 and 18 drawn to FIG. 1 should be considered elected, and examined together with the above listed generic claims.

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Claims 6, 16 and 22 readable on the non-elected species/embodiment of FIG. 8 should nevertheless be examined together with the above listed elected claims, because the search and examination of the entire application can be made without serious burden on the Examiner.

In view of the above, withdrawal of the Restriction Requirement and consideration of all claims pending in the instant application are believed appropriate and therefore courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.


Respectfully submitted,

**LOWE HAUPTMAN & BERNER, LLP**

  
Benjamin J. Hauptman  
Registration No. 29,310

USPTO Customer No. 22429  
1700 Diagonal Road, Suite 310  
Alexandria, VA 22314  
(703) 684-1111 BJH/KL/klb  
(703) 518-5499 Facsimile  
Date: March 8, 2005

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